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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Herrmann *et al.* Confirmation No.: 4095  
Appl No.: 10/617,978 Group Art Unit: 1638  
Filed: July 11, 2003 Examiner: Anne R. Kubelik  
For: ORALLY ACTIVE PESTICIDAL BIOPEPTIDES

June 24, 2005

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT**

This is in response to the Office Action dated May 26, 2005, in which the Examiner has required restriction between Group I, namely Claims 1-7 and 11-31, Group II, namely Claims 8-10, Group III, namely Claims 32-33, Group IV, namely claims 34-36, and Group V, namely claim 37. In the event the claims of Group I, II, or V are elected, the Examiner has also required an election of a single species of nucleotide sequence for prosecution on its merits, as each nucleotide sequence is not a member of a single genus of invention but constitutes a patentability distinct invention.

Applicants hereby elect without traverse to prosecute the claims of Group I (Claims 1-7). In view of the election of the Group I claims, Applicants hereby provisionally elect with traverse the nucleotide sequence of SEQ ID NO:17. Applicants expressly reserve the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Applicants respectfully note that the nucleotide sequences set forth in SEQ ID NOS:14 and 17 are related. These two sequences represent optimized sequences comprising coding sequence for the Aam1 polypeptide set forth in SEQ ID NO:20. SEQ ID NO:14 encodes the polypeptide set forth in SEQ ID NOS:15 and 16; this polypeptide comprises the sweet potato sporamin signal peptide and the Aam1 polypeptide of SEQ ID NO:20. SEQ ID NO:17 encodes the polypeptide set forth in SEQ ID NOS:18 and 19; this polypeptide comprises the BAA signal peptide and the Aam1 polypeptide of SEQ ID NO:20. Thus, the nucleotide sequences set forth in SEQ ID NOS:14 and 17 are related by virtue of the polypeptides encoded thereby. Further, these two nucleotide sequences share approximately 80% sequence identity across their respective Aam1 coding sequences.

In view of the structural and functional relationships between these two sequences, Applicants respectfully submit that it would not represent an undue burden for the Examiner to search the Group I claims of the invention with respect to both the nucleotide sequence set forth in

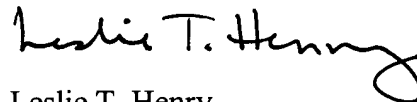
Appl No.: 10/617,978  
Amdt. dated 06/24/2005  
Reply to Restriction Requirement of May 26, 2005

SEQ ID NO:14 and the nucleotide sequence set forth in SEQ ID NO:17. Applicants therefore respectfully request examination of the Group I invention with the species of nucleotide sequences represented by SEQ ID NOS:14 and 17.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

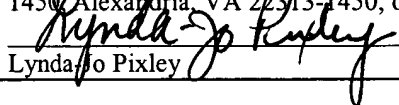


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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 24, 2005

  
Lynda Jo Pixley